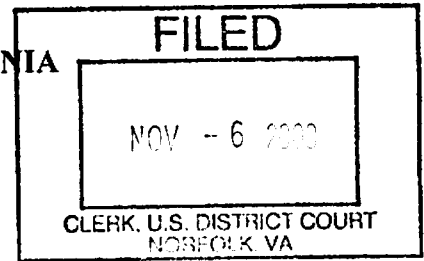


**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Norfolk Division



CALVIN ADKINSON, #334349,

Petitioner,

v.

ACTION NO.
2:09-cv-138

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of Petitioner's constitutional rights pertaining to his convictions for malicious wounding and unlawful wounding on May 24, 2004, in the Circuit Court of the City of Newport News, as a result of which he was sentenced to serve eleven years in the Virginia penal system.

The petition was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Magistrate Judge's Report and Recommendation filed October 8, 2009, recommends dismissal of the petition. The Court has received no objections to the Report and Recommendation and the time for filing objections has expired.

The Court does hereby accept the findings and recommendations set forth in the Report and Recommendation filed October 8, 2009, and it is therefore ORDERED that Respondent's Motion


to Dismiss be GRANTED, and that the petition be DENIED and DISMISSED. It is further ORDERED that judgment be entered in favor of Respondent.

To the extent the petition is based on Grounds that Petitioner was denied effective assistance of counsel due to counsel's failure to object to three improper jury instructions which incorrectly informed the jury as to the elements of malicious wounding, it is DENIED because Adkinson's claims are barred by the statute of limitations. Adkinson filed a habeas petition with the Circuit Court on September 26, 2006, after 265 days had elapsed from the one year statute of limitations. (Resp't. Br. 4). Eventually, however, on September 24, 2008, the Supreme Court of Virginia refused Adkinson's appeal of the Circuit Court's dismissal of that petition. (Ex. to Pet.). Adkinson then had 100 days remaining, or until January 2, 2009, to file his federal habeas petition. Adkinson, however, did not file the section 2254 writ until March 27, 2009, over two months past the statute of limitations deadline. (Doc. No. 1). Therefore, Adkinson's claims are barred by the statute of limitations.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.



/s/ Jerome B. Friedman

United States District Judge

Norfolk, Virginia

November 6, 2009